

**PROFESSIONAL SERVICES AGREEMENT  
WITH SOCIALMENTUM, LLC FOR  
ONLINE COMMUNITY ENGAGEMENT**

05273  
THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is made and entered into as of this 2nd day of November, 2012 ("Effective Date"), by and between the CITY OF NEWPORT BEACH, a California Municipal Corporation ("City"), and Socialmentum, LLC, a Nebraska Limited Liability Company ("Consultant"), whose address is 1111 N. 13th Street, Suite 101, Omaha, NE 68102 and is made with reference to the following:

**RECITALS**

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of City.
- B. City desires to engage Consultant to develop and host an online platform for community engagement known as "MindMixer", provide associated staff training, and perform certain support services related thereto ("Project").
- C. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the professional services described in this Agreement.
- D. The principal member of Consultant for purposes of Project shall be Steven Erickson.
- E. City has solicited and received a proposal from Consultant, has reviewed the previous experience and evaluated the expertise of Consultant, and desires to retain Consultant to render professional services under the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, it is mutually agreed by and between the undersigned parties as follows:

**1. TERM**

The term of this Agreement shall commence on the Effective Date, and shall terminate on October 31, 2013 ("Term"), unless terminated earlier as set forth herein.

**2. SERVICES TO BE PERFORMED**

City and Consultant acknowledge that the above Recitals are true and correct and are hereby incorporated by reference into this Agreement. Consultant shall diligently perform all the services described in the Scope of Services attached hereto as Exhibit A and incorporated herein by reference ("Services" or "Work"). The City may elect to delete certain Services within the Scope of Services at its sole discretion.

### 3. TIME OF PERFORMANCE

3.1 Time is of the essence in the performance of Services under this Agreement and Consultant shall perform the Services in accordance with the schedule included in Exhibit A. In the absence of a specific schedule, the Services shall be performed to completion in a diligent and timely manner. The failure by Consultant to strictly adhere to the schedule set forth in Exhibit A, if any, or perform the Services in a diligent and timely manner may result in termination of this Agreement by City.

3.1.1 Notwithstanding the foregoing, Consultant shall not be responsible for delays due to causes beyond Consultant's reasonable control. However, in the case of any such delay in the Services to be provided for the Project, each party hereby agrees to provide notice within two (2) days of the occurrence causing the delay to the other party so that all delays can be addressed.

3.2 Consultant shall submit all requests for extensions of time for performance in writing to the Project Administrator (as defined in Section 6 below) not later than ten (10) calendar days after the start of the condition that purportedly causes a delay. The Project Administrator shall review all such requests and may grant reasonable time extensions for unforeseeable delays that are beyond Consultant's control.

3.3 For all time periods not specifically set forth herein, Consultant shall respond in the most expedient and appropriate manner under the circumstances, by fax, hand-delivery or mail.

### 4. COMPENSATION TO CONSULTANT

4.1 City shall pay Consultant for the Services on a time and expense not-to-exceed basis in accordance with the provisions of this Section and the Schedule of Billing Rates attached hereto as Exhibit B and incorporated herein by reference. Consultant's compensation for all Work performed in accordance with this Agreement, including all reimbursable items and subconsultant fees, shall not exceed **Seven Thousand Dollars and 00/100 (\$7,000.00)** without prior written authorization from City. No billing rate changes shall be made during the term of this Agreement without the prior written approval of City.

4.2 Consultant shall submit monthly invoices to City describing the Work performed the preceding month. Consultant's bills shall include the name of the person who performed the Work, a brief description of the Services performed and/or the specific task in the Scope of Services to which it relates, the date the Services were performed, the number of hours spent on all Work billed on an hourly basis, and a description of any reimbursable expenditures. City shall pay Consultant no later than thirty (30) days after approval of the monthly invoice by City staff.

4.3 City shall reimburse Consultant only for those costs or expenses specifically identified in Exhibit B to this Agreement, or specifically approved in writing in advance by City.

4.4 Consultant shall not receive any compensation for Extra Work performed without the prior written authorization of City. As used herein, "Extra Work" means any

Additional Support Services that are determined by City to be necessary for the proper completion of the Project, but which are not included within the Scope of Services and which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Compensation for any authorized Extra Work shall be paid in accordance with the Schedule of Billing Rates as set forth in Exhibit B.

## **5. PROJECT MANAGER**

5.1 Consultant shall designate a Project Manager, who shall coordinate all phases of the Project. This Project Manager shall be available to City at all reasonable times during the Agreement term. Consultant has designated Steven Erickson to be its Project Manager. Consultant shall not remove or reassign the Project Manager or any personnel listed in Exhibit A or assign any new or replacement personnel to the Project without the prior written consent of City. City's approval shall not be unreasonably withheld with respect to the removal or assignment of non-key personnel.

5.2 Consultant, at the sole discretion of City, shall remove from the Project any of its personnel assigned to the performance of Services upon written request of City. Consultant warrants that it will continuously furnish the necessary personnel to complete the Project on a timely basis as contemplated by this Agreement.

## **6. ADMINISTRATION**

This Agreement will be administered by the City Manager's Office. Tara Finnigan, Public Information Manager or her designee, shall be the Project Administrator and shall have the authority to act for City under this Agreement. The Project Administrator or his/her designee shall represent City in all matters pertaining to the Services to be rendered pursuant to this Agreement.

## **7. CITY'S RESPONSIBILITIES**

To assist Consultant in the execution of its responsibilities under this Agreement, City agrees to provide access to and upon request of Consultant, one copy of all existing relevant information on file at City. City will provide all such materials in a timely manner so as not to cause delays in Consultant's Work schedule.

## **8. STANDARD OF CARE**

8.1 All of the Services shall be performed by Consultant or under Consultant's supervision. Consultant represents that it possesses the professional and technical personnel required to perform the Services required by this Agreement, and that it will perform all Services in a manner commensurate with the highest professional standards. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one (1) or more first-class firms performing similar work under similar circumstances.

8.2 All Services shall be performed by qualified and experienced personnel who are not employed by City. By delivery of completed Work, Consultant certifies that the Work conforms to the requirements of this Agreement; all applicable federal, state and local laws; and the highest professional standard.

8.3 Consultant represents and warrants to City that it has, shall obtain, and shall keep in full force and effect during the term hereof, at its sole cost and expense, all licenses, permits, qualifications, insurance and approvals of whatsoever nature that is legally required of Consultant to practice its profession. Consultant shall maintain a City of Newport Beach business license during the term of this Agreement.

8.4 Consultant shall not be responsible for delay, nor shall Consultant be responsible for damages or be in default or deemed to be in default by reason of strikes, lockouts, accidents, acts of God, or the failure of City to furnish timely information or to approve or disapprove Consultant's Work promptly, or delay or faulty performance by City, contractors, or governmental agencies.

## **9. HOLD HARMLESS**

9.1 To the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City, its City Council, boards and commissions, officers, agents and employees (collectively, the "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever (individually, a Claim; collectively, "Claims"), which may arise from or in any manner relate (directly or indirectly) to any breach of the terms and conditions of this Agreement, any Work performed or Services provided under this Agreement including, without limitation, defects in workmanship or materials or Consultant's presence or activities conducted on the Project (including the negligent and/or willful acts, errors and/or omissions of Consultant, its principals, officers, agents, employees, vendors, suppliers, consultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them).

9.2 Notwithstanding the foregoing, nothing herein shall be construed to require Consultant to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorney's fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Consultant.

## **10. INDEPENDENT CONTRACTOR**

It is understood that City retains Consultant on an independent contractor basis and Consultant is not an agent or employee of City. The manner and means of conducting the Work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the expressed terms of this Agreement. No civil service status or other right of employment shall accrue to Contractor or its employees. Nothing in this Agreement shall be deemed to constitute approval for Consultant or any of Consultant's employees or agents, to be the agents or employees of City. Consultant shall have the responsibility for and control over the means of



performing the Work, provided that Consultant is in compliance with the terms of this Agreement. Anything in this Agreement that may appear to give City the right to direct Consultant as to the details of the performance of the Work or to exercise a measure of control over Consultant shall mean only that Consultant shall follow the desires of City with respect to the results of the Services.

## **11. COOPERATION**

Consultant agrees to work closely and cooperate fully with City's Project Administrator and any other agencies that may have jurisdiction or interest in the Work to be performed. City agrees to cooperate with the Consultant on the Project.

## **12. CITY POLICY**

Consultant shall discuss and review all matters relating to policy and Project direction with City's Project Administrator in advance of all critical decision points in order to ensure the Project proceeds in a manner consistent with City goals and policies.

## **13. PROGRESS**

Consultant is responsible for keeping the Project Administrator and/or his/her duly authorized designee informed on a regular basis regarding the status and progress of the Project, activities performed and planned, and any meetings that have been scheduled or are desired.

## **14. INSURANCE**

Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement or for other periods as specified in this Agreement, policies of insurance of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit C, and incorporated herein by reference.

## **15. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS**

Except as specifically authorized under this Agreement, the Services to be provided under this Agreement shall not be assigned, transferred contracted or subcontracted out without the prior written approval of City. Any of the following shall be construed as an assignment: The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or joint venturer or syndicate member or cotenant if Consultant is a partnership or joint-venture or syndicate or cotenancy, which shall result in changing the control of Consultant. Control means fifty percent (50%) or more of the voting power, or twenty-five percent (25%) or more of the assets of the corporation, partnership or joint-venture.

## 16. SUBCONTRACTING

The subcontractors authorized by City, if any, to perform Work on this Project are identified in Exhibit A. Consultant shall be fully responsible to City for all acts and omissions of any subcontractor. Nothing in this Agreement shall create any contractual relationship between City and any subcontractor nor shall it create any obligation on the part of City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise required by law. The City is an intended beneficiary of any Work performed by the subcontractor for purposes of establishing a duty of care between the subcontractor and the City. Except as specifically authorized herein, the Services to be provided under this Agreement shall not be otherwise assigned, transferred, contracted or subcontracted out without the prior written approval of City.

## 17. OWNERSHIP OF DOCUMENTS

17.1 Subject to Section 17.3., below, each and every report, draft, map, record, plan, document and other writing produced (hereinafter "Documents"), prepared or caused to be prepared by Consultant, its officers, employees, agents and subcontractors, in the course of implementing this Agreement, shall become the exclusive property of City, and City shall have the sole right to use such materials in its discretion without further compensation to Consultant or any other party. Consultant shall, at Consultant's expense, provide such Documents to City upon prior written request.

17.2 Documents, including drawings and specifications, prepared by Consultant pursuant to this Agreement are not intended or represented to be suitable for reuse by City or others on any other project. Any use of completed Documents for other projects and any use of incomplete Documents without specific written authorization from Consultant will be at City's sole risk and without liability to Consultant. Further, any and all liability arising out of changes made to Consultant's deliverables under this Agreement by City or persons other than Consultant is waived against Consultant and City assumes full responsibility for such changes unless City has given Consultant prior notice and has received from Consultant written consent for such changes.

17.3 Creative Materials. The parties acknowledge and agree that an integral part of Consultant's Services is the development of the MindMixer Site, which will include the development of certain information, content, text, graphics, photos, videos, domain names, software and other items, as well as their selection and arrangement (collectively, the "MindMixer Creative Materials"). Such Creative Materials are protected by copyrights, trademarks, patents, trade secrets and other intellectual property and proprietary rights, and except as otherwise provided herein, Consultant shall be considered the author of such Creative Materials and retains all right, title and interest in and to such Creative Materials. City's rights to use the Creative Materials are limited to use solely in connection with this Agreement, the Project and the rights and obligations granted hereunder. Except as otherwise provided herein, any rights granted to City to use the Creative Materials shall terminate upon termination of this Agreement. Nothing herein shall transfer from City to Consultant any ownership rights in materials owned by

City (e.g., logos) which might be used with the Creative Materials or on the MindMixer Site, including, but not limited to copyrighted, trademarked, trade named, or similarly protected intellectual materials owned by City.

17.4 User Content. The parties acknowledge and agree that the user content generated on the MindMixer Site is not owned by either Consultant or City, but can be used by either party for promotional purposes or any other applicable purpose during and after the Term, or as otherwise provided herein. Consultant acknowledges that the City can and will retain, throughout the Term and thereafter, the right to use any user content and the Deliverables for any and all purposes related to the general business of the City, future City projects, and any and all promotional activities related to the Site. City will be provided with an electronic copy of all user content at the completion of the Term.

## **18. COMPUTER DELIVERABLES**

18.1 All written documents shall be transmitted to City in formats compatible with Microsoft Office and/or viewable with Adobe Acrobat.

18.2 Electronic Database. Upon request and upon termination/expiration of the Agreement, Consultant shall provide City with an electronic database (the "Database") and Summary Document (collectively the "Deliverables") containing the following information: (i) user names and associated electronic mail addresses; (ii) aggregate reports containing information about the age, location and activity of the Site's users; and (iii) all user-generated content on the Site.

## **19. CONFIDENTIALITY**

19.1 All Documents, including drafts, preliminary drawings or plans, notes and communications that result from the Services in this Agreement, shall be kept confidential unless the disclosing party expressly authorizes in writing the release of information. Confidential Information includes, but is not limited to, (a) the Deliverables; (b) all business, financial and technical trade secrets; (c) any written information which is marked "Confidential"; and (d) any information which is orally disclosed, identified as confidential at the time of disclosure and confirmed in writing as being confidential within thirty (30) days thereafter.

19.2 Confidential Information shall not include information that (a) is publicly known at the time of its disclosure; (b) is lawfully received from a third party not under an obligation of confidentiality to the disclosing party; (c) is published or otherwise made known to the public by the disclosing party; or (d) is required to be disclosed to the public under applicable law, e.g., the California Public Records Act.

19.3 The receiving party will refrain from using the disclosing party's Confidential Information except to the extent necessary to exercise its rights or perform its obligations under this Agreement.

## **20. INTELLECTUAL PROPERTY INDEMNITY**

The Consultant shall defend and indemnify City, its agents, officers, representatives and employees against any and all liability, including costs, for infringement or alleged infringement of any United States' letters patent, trademark, or copyright, including costs, contained in Consultant's Documents provided under this Agreement.

## **21. RECORDS**

Consultant shall keep records and invoices in connection with the Services to be performed under this Agreement. Consultant shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any Services, expenditures and disbursements charged to City, for a minimum period of seven (7) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such records and invoices shall be clearly identifiable. Consultant shall allow a representative of City to examine, audit and make transcripts or copies of such records and invoices during regular business hours. Consultant shall allow inspection of all Work, data, Documents, proceedings and activities related to the Agreement for a period of seven (7) years from the date of final payment to Consultant under this Agreement.

## **22. WITHHOLDINGS**

City may withhold payment to Consultant of any disputed sums until satisfaction of the dispute with respect to such payment. Such withholding shall not be deemed to constitute a failure to pay according to the terms of this Agreement. Consultant shall not discontinue Work as a result of such withholding. Consultant shall have an immediate right to appeal to the City Manager or his/her designee with respect to such disputed sums. Consultant shall be entitled to receive interest on any withheld sums at the rate of return that City earned on its investments during the time period, from the date of withholding of any amounts found to have been improperly withheld.

## **23. ERRORS AND OMISSIONS**

In the event of errors or omissions that are due to the negligence or professional inexperience of Consultant which result in expense to City greater than what would have resulted if there were not errors or omissions in the Work accomplished by Consultant, the additional design, construction and/or restoration expense shall be borne by Consultant. Nothing in this Section is intended to limit City's rights under the law or any other sections of this Agreement.

## **24. CITY'S RIGHT TO EMPLOY OTHER CONSULTANTS**

City reserves the right to employ other Consultants in connection with the Project.



## **25. CONFLICTS OF INTEREST**

25.1 The Consultant or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act"), which (1) requires such persons to disclose any financial interest that may foreseeably be materially affected by the Work performed under this Agreement, and (2) prohibits such persons from making, or participating in making, decisions that will foreseeably financially affect such interest.

25.2 If subject to the Act, Consultant shall conform to all requirements of the Act. Failure to do so constitutes a material breach and is grounds for immediate termination of this Agreement by City. Consultant shall indemnify and hold harmless City for any and all claims for damages resulting from Consultant's violation of this Section.

## **26. NOTICES**

26.1 All notices, demands, requests or approvals, including any change in mailing address, to be given under the terms of this Agreement shall be given in writing, and conclusively shall be deemed served when delivered personally, or on the third business day after the deposit thereof in the United States mail, postage prepaid, first-class mail, addressed as hereinafter provided. All notices, demands, requests or approvals from Consultant to City shall be addressed to City at:

Attn: Tara Finnigan, Public Information Manager  
City Manager's Office  
City of Newport Beach  
3300 Newport Boulevard  
PO Box 1768  
Newport Beach, CA 92658  
Phone: 949-644-3035  
Fax: 949-644-3020

26.2 All notices, demands, requests or approvals from City to Consultant shall be addressed to Consultant at:

Attn: Steven Erickson  
Socialmentum, LLC  
1111 N. 13th Street, Suite 101  
Omaha, NE 68102  
Phone: 909-677-3882  
Email: serickson@mindmixer.com

## **27. CLAIMS**

Unless a shorter time is specified elsewhere in this Agreement, before making its final request for payment under this Agreement, Consultant shall submit to City, in writing, all claims for compensation under or arising out of this Agreement. Consultant's acceptance of the final payment shall constitute a waiver of all claims for compensation under or arising out of this Agreement except those previously made in writing and identified by Consultant in writing as unsettled at the time of its final request

for payment. The Consultant and the City expressly agree that in addition to any claims filing requirements set forth in the Agreement, the Consultant shall be required to file any claim the Consultant may have against the City in strict conformance with the Government Claims Act (California Government Code sections 900 *et seq.*).

## **28. TERMINATION**

28.1 In the event that either party fails or refuses to perform any of the provisions of this Agreement at the time and in the manner required, that party shall be deemed in default in the performance of this Agreement. If such default is not cured within a period of two (2) calendar days, or if more than two (2) calendar days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within two (2) calendar days after receipt of written notice of default, specifying the nature of such default and the steps necessary to cure such default, and thereafter diligently take steps to cure the default, the non-defaulting party may terminate the Agreement forthwith by giving to the defaulting party written notice thereof.

28.2 Notwithstanding the above provisions, City shall have the right, at its sole and absolute discretion and without cause, of terminating this Agreement at any time by giving no less than seven (7) calendar days prior written notice to Consultant. In the event of termination under this Section, City shall pay Consultant for Services satisfactorily performed and costs incurred up to the effective date of termination for which Consultant has not been previously paid. On the effective date of termination, Consultant shall deliver to City all reports, Documents and other information developed or accumulated in the performance of this Agreement, whether in draft or final form.

## **29. STANDARD PROVISIONS**

29.1 Compliance with all Laws. Consultant shall at its own cost and expense comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted. In addition, all Work prepared by Consultant shall conform to applicable City, county, state and federal laws, rules, regulations and permit requirements and be subject to approval of the Project Administrator and City.

29.2 Waiver. A waiver by either party of any breach, of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

29.3 Integrated Contract. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions herein.

29.4 Conflicts or Inconsistencies. In the event there are any conflicts or inconsistencies between this Agreement and the Scope of Services or any other attachments attached hereto, the terms of this Agreement shall govern.

29.5 Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of the Agreement or any other rule of construction which might otherwise apply.

29.6 Amendments. This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney.

29.7 Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

29.8 Controlling Law and Venue. The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange, State of California.

29.9 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, age or any other impermissible basis under law.

29.10 No Attorney's Fees. In the event of any dispute or legal action arising under this Agreement, the prevailing party shall not be entitled to attorney's fees.

29.11 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

**[SIGNATURES ON NEXT PAGE]**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates written below.

**APPROVED AS TO FORM:  
CITY ATTORNEY'S OFFICE**

Date: 12/12/12

By: [Signature]  
Aaron C. Harp  
City Attorney

mb 10-12

**ATTEST:**  
Date: 11/02/2012

By: [Signature]  
Leilani I. Brown  
City Clerk



**CITY OF NEWPORT BEACH,  
A California municipal corporation**

Date: 10/25/2012

By: [Signature]  
Dave Kiff  
City Manager

**CONSULTANT: Socialmentum, LLC, a  
Nebraska limited liability company**

Date: 10/12/12

By: [Signature]  
Nicholas J. Bowden  
Chief Engagement Officer, Founder and  
Member

Date: 12/14/2012

By: [Signature]  
Nathan L. Preheim  
Chief Operations Officer, Founder and  
Member

**[END OF SIGNATURES]**

Attachments:      Exhibit A – Scope of Services  
                         Exhibit B – Schedule of Billing Rates  
                         Exhibit C – Insurance Requirements

A12-00662



## **EXHIBIT A SCOPE OF SERVICES**

### **1. SITE DEVELOPMENT SERVICES**

#### **A. Development and Rejection/Acceptance of Site**

- 1) Consultant shall develop the MindMixer online community engagement site (the "Site") for City no later than four weeks after the Effective Date of this Agreement. Upon the completion of the Site, Consultant shall deliver the Site to City for review and/or testing.
- 2) Within 15 business days of receipt, City shall either notify Consultant in writing of its acceptance or rejection of the Site. Any notice of rejection shall include reference to specific issues in detail sufficient for Consultant to provide suitable remedial solutions.
- 3) Upon completion of any necessary remedial work, Consultant shall again deliver the Site to City, which shall then have 5 business days within which to complete its acceptance or rejection review. Any further rejection of the Site shall also require City's review and response within 5 business days. In the event City fails to accept or reject a remedy supplied by Consultant within the applicable time period, such failure shall be deemed to constitute acceptance. No Site may be used live by City until City has accepted said Site.
- 4) Acceptance of the Site shall signify the completion by Consultant of its development obligations under this Agreement. Said acceptance date shall be deemed the "Launch Date".

#### **B. Design and Launch of Site**

- 1) City shall have live access to Site beginning on the Launch Date
- 2) Consultant shall provide four (4) hours of custom site design support throughout the Term of the Agreement.
- 3) Consultant shall use its best efforts to fulfill all custom design requests within three (3) business days.

#### **C. Domain Name and Site Hosting**

- 1) Consultant will work with City to identify Project Name, secure URL, and host Site for operation throughout the Term.
- 2) Site URL ownership will be retained by Consultant.

D. Live Site

- 1) The Site shall include all aspects of the MindMixer Engagement Platform, including idea submission, idea evolution, user voting, interactive budgeting, and expert/City feedback (two-way engagement). Consultant shall provide City access to the MindMixer Content Management Dashboard and the MindMixer Data Dashboard, which include data on Site analytics, user demographics, user comments and other data.
- 2) City, via the Data Dashboard, shall have access to produce a summary document (the "Summary Document"), that will include the following data: (i) site analytics; (ii) "Winning Ideas" and user information associated with such ideas; (iii) summary of demographic information related to the Site's user base; and (iv) summary of additional relevant information, as applicable.
- 3) City is responsible for selecting and uploading Site topics and any asset associated with each topic (i.e. photos, maps, videos, etc.).
- 4) City is solely responsible for topic asset production related to the Site (e.g., video introductions of topics, topic photos, map production, etc.).
- 5) Site shall remain "live" as a read-only site for three (3) months after termination/expiration of this Agreement.

2. **MINDMIXER UNIVERSITY TRAINING SESSIONS**

Prior to launch of the Site, Consultant will host three training sessions via WebEx or alternative web conferencing system. Training sessions will cover the following items:

- 1) Online Community Engagement 101
- 2) Site Programming and Content Training
- 3) Site Production and Community Management

3. **SUPPORT SERVICES**

A. General Support Services

- 1) Consultant shall provide up to four (4) hours each month of Site administration, maintenance and support, including City and user support during the Term.
- 2) Support Services include, but are not limited to the following:
  - Additional City support on topic creation, topic uploading, or other site modification tasks

- General user support (password reset, site navigation issues, site utilization questions, etc.)
- 3) Consultant shall promptly notify City if the foregoing amount of Support Services has been exceeded.

**B. Additional Support Services**

Any Support Services requested by City that are in excess of the foregoing amount, including training, end-user support or support for any specific issues, shall be deemed Additional Support Services and shall be billed to City in accordance with Exhibit B. Consultant shall obtain City's written approval prior to performing said Additional Support Services.

**4. SERVICE LEVEL AGREEMENT ("SLA") STANDARDS**

**A. Uptime Percentage**

- 1) Consultant's web platform shall be operational and available to City at least 99.5% of the time in any calendar month (the "MindMixer Application SLA").
- 2) If Consultant does not meet the MindMixer Application SLA, City shall receive the Support Service Credits described below:

| <b>Uptime Percentage</b> | <b>Support Service Credit (Days)</b> |
|--------------------------|--------------------------------------|
| < 99.5% - >= 99.0%       | 3                                    |
| < 99.0% - >= 95.0%       | 7                                    |
| < 95.0%                  | 15                                   |

**B. Service Credit Request**

In order to receive a Support Service Credit, City shall notify Consultant within thirty (30) days or as soon thereafter as possible, from the time City becomes eligible to receive a Support Service Credit.

**C. Maximum Support Service Credit**

The aggregate maximum number of Support Service Credits to be issued by Consultant to City for all downtime that occurs in a single calendar month shall not exceed fifteen days of Service added to the end of City's term for the Service. Support Service Credits may not be exchanged for, or converted to, monetary amounts.

#### **D. Application SLA Exclusions**

The MindMixer Application SLA does not apply to any services that expressly exclude this MindMixer Application SLA or any performance issues: (i) caused by factors beyond Consultant's reasonable control; or (ii) that resulted from City's equipment or third party equipment, or both (not within the primary control of Consultant.)

#### **5. WEBSITE TERMS OF USE AND PRIVACY POLICY.**

Consultant shall include on the Site certain privacy policies (the "Privacy Policy") and terms of use ("Terms of Use") that govern the activities of Consultant and the users on the Site, including the use of users' personal information. City represents that it has read and is familiar with Consultant's Privacy Policy and Terms of Use, as set forth below. In the event of any conflicts or inconsistencies between this Agreement and the Privacy Policy or Terms of Use, the terms of this Agreement shall govern.

### **PRIVACY POLICY**

#### **In General**

Socialmentum, LLC ("Socialmentum") has established this website (the "Site") to enable you, as a visitor, to provide input, feedback and suggestions on the topics described on the home page and other pages of the Site, as applicable (the "Service"). This Privacy Policy sets forth the nature, purpose, use and sharing of any any information that identifies or can be used to identify you ("Personal Information"). Personal Information does not include any information that we use to identify you in our system, such as your username. Please regularly review our Privacy Policy, as our Site and our activities on our Site are governed by the then-current Privacy Policy, which may be different than the privacy policy in effect at the time data was collected. This Privacy Policy does not govern privacy practices associated with offline activities, websites other than the Site, or practices of third parties that we do not own or control, such as our partners or advertisers.

The Site is intended for adult audiences only, and Socialmentum does not knowingly collect any Personal Information from anyone under 13 years of age. If you are under age 13, please do not attempt to register for the Site or provide any Personal Information about yourself to us. If we learn that we have collected Personal Information from a child under age 13, we will delete that information as quickly as possible. If you believe that we might have any Personal Information from a child under the age of 13, please contact us immediately.

The Site may contain links to other sites at which Personal Information is collected. Additionally, you may be able to access the Site from other sites on which you will be required to provide Personal Information. In such instances, unless expressly provided to the contrary, the collection and use of your Personal Information will be governed by the privacy policy applicable to each site. That privacy policy should identify the entity that is collecting your Personal Information.

If Socialmentum sells assets or interests to, or is acquired by or merged with, another person or entity, you agree that Socialmentum may provide to such person or entity all information in its possession without obtaining your further consent. Socialmentum may or may not provide notice of such sales, acquisitions, or mergers on this Site.

#### **Changes in Privacy Policy**



Socialmentum may change this Privacy Policy from time to time at its sole discretion. If as the result of such changes you want to alter the ways in which Socialmentum is allowed to use your Personal Information, you can do so by following the procedure described in the section entitled "Updating Your Personal Information and Privacy Preferences." You will be deemed to have been made aware of, and will be subject to, the changes to the Privacy Policy after such changes have been posted.

### **Collection of Personal Information**

Personal Information on this Site is collected by Socialmentum. During the registration process, you will be required to provide us with your name, birthdate, zip code and email address. We will follow up by sending you an email to verify that you are the owner of the email address. We will use your email address to identify you in our system. You can choose to provide us with additional optional Personal Information in your profile, including your gender and mobile phone number. If you do not provide the mandatory data required at registration, you will not be able to use the Service. Similarly, if you wish to delete your information (pursuant to the mechanism set forth in "Updating Your Personal Information and Privacy Preferences and Reporting Privacy Complaints") that is mandatory, you will no longer be able to use the Service.

**Metadata:** One of the primary reasons people use this Site is to share content with others. Examples include when you submit an idea, upload or take a photo, upload or record a video, share a link, make a comment, or send someone a message. This information is not considered Personal Information protected under this Privacy Policy. If you do not want us to store metadata associated with content you share on the Site, please remove the metadata before uploading the content.

Socialmentum may also collect certain information about your computer to facilitate, evaluate and verify your use of the Site. For example, we may log environmental variables, such as browser type, operating system, CPU speed, referring or exit webpages, click patterns, Session ID (a unique identifier assigned to the browser in connection to the Site), and the Internet Protocol (IP) address of your computer. Socialmentum also uses such information to measure traffic patterns on the Site. We do not match such information with Personal Information held about you by Socialmentum unless we have your consent, except as otherwise described in this Privacy Policy.

By using this Site, you agree and acknowledge that with respect to certain activities, the collection, transfer, storage, and processing of your information may be undertaken by trusted third party vendors or agents of Socialmentum such as web hosting providers and mail and email service providers, to help facilitate Socialmentum in providing certain functions.

In order to reduce errors in our database, authenticate our users, prevent fraud and abuse of our Site, and to provide more consistent, relevant experiences to our users, we may on occasion supplement or correct the Personal Information you submit to us and your Internet Protocol (IP) address with information in our other databases or information from third-party sources.

### **How Your Personal Information Is Used**

In general, Socialmentum collects and uses your information in order to record, support and facilitate your participation on our Site, as well as to prevent fraud and abuse. While the input, feedback and suggestions you provide will be provided to the entity who is sponsoring this Site (the "Sponsor"), and may also be displayed on the Site for viewing by the general public, we will not disclose your Personal Information to either Sponsor or to any other third party, except as provided herein. Specifically, Socialmentum uses your Personal Information in the following manner:

1. Communications. We will use email as our primary means to inform you of important service, promotional, and system-related announcements.
2. On the Site.
  - a. Contributions. The Site offers opportunities for you to vote and comment on content submitted by others, engage in dialogue, share information, and submit original content. When you make a

contribution to the Site, you will be identified by your username as the author of that contribution. Other than the username, which can be entirely made up, and except as otherwise provided herein, in using the Site, you are not required to provide or publicize any Personal Information in connection with your contributions and actions on the Site. Please note that any information you post to the Site after you sign up is not considered Personal Information under this Privacy Policy and may be available to all persons accessing the Site. The information you share may be read, collected or used by others for any purpose. Neither Socialmentum nor the Sponsor is responsible for the Personal Information or any other information you elect to submit to the Site, or the use of such information. If you do not wish for your information to be posted or distributed in this manner, you should not contribute to the Site.

- b. *Public Profile.* When you register, we will create a public profile based on your username. You may, but are not required, to include Personal Information in your public profile. Any contributions you make to your public profile may be accessed, viewed and used by the public.
- c. *Site Statistics.* Socialmentum may collect information about the use of the Site and the Service, such as how many users/visitors we receive daily, Site pages visited, and the IP address of your computer. This information is generally collected in aggregate form, without identifying any user individually, although IP addresses and Session ID in relation to downloads may be tracked as part of Socialmentum's fraud prevention efforts. Other exceptions to this, where an individual may be identified individually, are noted in this Privacy Policy.

3. With Third Parties.

- a. *Statistics.* Occasionally we share anonymous, non-personal, aggregate information about our user base with our partners or advertisers and we may publish these aggregate usage statistics on our Site for your interest. Except as otherwise provided herein, we do not tie this shared or published data to Personal Information.
- b. *Providers.* Socialmentum recognizes and appreciates the importance of responsible use of information collected on the Site. Socialmentum will respect your legal rights regarding access to, and correction and deletion of, your Personal Information. Socialmentum may communicate information to you regarding products, services, and special offers available from Socialmentum unless you have opt not to receive such communications or such communications are prohibited by law, although in such cases we may find it necessary to continue to communicate with you regarding your use of the Site. In addition, you may receive communications and special offers from selected reputable advertisers, organizations, partners or other entities that offer services or products that we believe would interest you (collectively, "Providers") (or from Socialmentum on behalf of such Providers), but only if you have not previously opted out of receiving such communications. Except in the particular circumstances described in this Privacy Policy, Socialmentum will not provide your name to other companies or organizations without your consent. If you wish to discontinue receipt of communications from our selected Providers, please contact those third parties directly to update your preferences.
- c. *Linked Services.* In some cases, we allow you to access or link to other third party web services or websites through our Site. In other instances, you may access or link to this Site through other third party sites. In such instances, we will clearly identify situations where you are accessing or linking to or from these other sites or services through or to our Site. In these instances, the third party web services or websites may choose to collect your personal information as they deem appropriate. We and the Sponsor are not responsible for or in control of how such third parties collect, disclose or otherwise use your Personal Information. Such use shall be governed by each applicable third party's own privacy policies.

4. Sponsors; Governmental Entities.

- a. *General.* We will provide certain Personal Information to the Sponsor. Specifically, we will provide the Sponsor with the following information under the following circumstances: (a) your name and email address, along with any "winning ideas" that you are associated with; (b) a summary of the demographic information related to the Site's user base; (c) a database of user names and associated email addresses; (d) aggregate reports containing information about users' ages, locations and activities on the Site; and (f) other related data.
- b. *Public Records.* If the Sponsor is a government entity or other public body, then representatives of that government entity or public body will communicate via the Site. Consequently, any communication via the Site (whether by a government representative, you, or the general public)

may be considered a "public record" in the jurisdiction of the Sponsor, and, as such, may be subject to monitoring and retention by the Sponsor, and disclosure to third parties.

5. Other/Legal. There are other instances in which Socialmentum may divulge your Personal Information, such as when required by law, regulation, or litigation. We may also disclose your Personal Information if we determine that such disclosure should be made for reasons of national security, law enforcement, or other issues of public importance.

### **Tracking, Use of Cookies, Web Beacons and Similar Devices**

In order to improve the Site and provide more convenient, relevant experiences to you, we and our agents may use "cookies," "web beacons," and similar devices to track your activities. A cookie is a small amount of data that is transferred to your browser by a web server and can only be read by the server that gave it to you. It functions as your identification card and enables Socialmentum to record your passwords and preferences. It cannot be executed as code or deliver viruses. A web beacon is a small transparent .gif image that is embedded in an HTML page or email used to track when the page or email has been viewed.

Most browsers are initially set to accept cookies. You can set your browser to notify you when you receive a cookie, giving you the chance to decide whether or not to accept it. (For some web pages that require an authorization, cookies are not optional. Users choosing not to accept cookies or similar devices will probably not be able to access those pages.)

We may ask you to provide information of others such as when reporting suspected piracy. In this instance, we will ask for the person's or company's name and contact information so that we may investigate. Personal information supplied in these instances will only be used for the purpose being submitted.

Socialmentum may hire other companies to place our banner ads on other websites. Such companies perform tracking and reporting activities on ads served and user reaction ("Third-party Advertisement Servers"). They do not collect any information other than IP addresses and behaviors associated with those IP addresses on our behalf, and we do not give any Personal Information to them. Third-party Advertisement Servers are subject to their own privacy policies. Socialmentum may also allow other companies to display advertisements on certain pages of the Site. If you click on these advertisements these companies may place a persistent cookie on your computer which may allow them to display further advertisements to you. It is our policy to require these companies to provide accessible methods for you to disable these cookies. Should you have any complaints about the practices of any of these companies you should contact Socialmentum.

### **Updating Your Personal Information and Privacy Preferences and Reporting Privacy Complaints**

You have the right to access, correct and delete inaccuracies in your Personal Information and privacy preferences (such as whether you wish to receive promotional communications) at any time. If you wish to access and correct your Personal Information and privacy preferences, or if you believe that Socialmentum has not complied with this Privacy Policy with respect to your Personal Information, you may write to Socialmentum at the following address:

Socialmentum, LLC  
1111 N. 13th Street, Suite 116  
Omaha, NE 68102  
Attn: Chief Executive Officer

In your correspondence, please indicate with as much detail as possible the location on this Site or otherwise where you provided your Personal Information, or any details surrounding your belief that we have not complied with our Privacy Policy with respect to your Personal Information. You may expect a response from us within thirty (30) days.

Also, please note that neither Socialmentum nor the Sponsor is responsible for the content or privacy practices of non-Socialmentum websites to which this Site or any other Socialmentum website may link. You should review the privacy policies of such sites before using the sites.

## **TERMS OF USE**

### **ACCEPTANCE OF TERMS**

Socialmentum, LLC ("Socialmentum") has established this website (the "Site") to enable you, as a visitor, to provide input, feedback and suggestions on the topics described on the home page and other pages of the Site, as applicable. Please read this document carefully before accessing or using the Site. By accessing or using the Site in any way, including registering on the Site, contributing your input, feedback or suggestions, or merely browsing the Site, you agree to and are bound by the terms and conditions set forth in this document and in any changes thereto that Socialmentum may publish from time to time (collectively, the "Terms of Use"). If you do not agree to all of the terms and conditions contained in the Terms of Use, do not access or use this Site.

Socialmentum may change the Terms of Use and other guidelines and rules posted on the Site from time to time at its sole discretion. Your continued access or use of the Site constitutes your acceptance of the changes. Your access and use of the Site will be subject to the most current version of the Terms of Use posted on the Site at the time of such use. Please regularly check the "Terms of Use" link at [www.mindmixer.com](http://www.mindmixer.com) to view the then-current terms. If you breach any of the Terms of Use, your authorization to access or use this Site automatically terminates. These Terms of Use are in addition to Socialmentum's other terms, conditions, policies, rules and regulations relating to the products and services it provides.

### **INTELLECTUAL PROPERTY; LIMITED LICENSE TO USERS; TRADEMARK INFORMATION**

The Site content, consisting of text, graphics, photos, videos and other items (collectively, the "Content"), as well as their selection and arrangement, are protected by copyrights, trademarks, patents, trade secrets and other intellectual property and proprietary rights (collectively, "Intellectual Property Rights"), and any unauthorized use of the Content may violate such laws and the Terms of Use. Except as expressly provided herein, Socialmentum does not grant any express or implied rights to you to use the Content. You agree not to copy, republish, frame, modify, adapt, create derivative works based on, rent, lease, loan, sell, assign, distribute, perform, license, sublicense or reverse engineer any of the Content or the selection and arrangement of the Content, except as expressly authorized herein. In addition, you agree not to use any data mining, robots or similar data gathering and extraction methods in connection with the Site or Content.

The trademarks, service marks, logos and domain names ("Marks") displayed on this Site are the property of Socialmentum or other third parties. You are not permitted to use or register the Marks or any trademark, service mark, logo or domain name that is confusingly similar thereto without the prior written consent of Socialmentum or such third party that may own the Marks.

### **USE OF SITE AND SERVICES**

You shall pay all costs and charges that you incur in order to access or use the Site. You agree to use the Site only to provide input, feedback and suggestions on the topics described on the home page and other pages of the Site. You are solely responsible for the content of any contribution you make to the Site. As some examples of improper activities when accessing or using the Site, you agree that you shall not:

- Violate the Guidelines for this Site.
- Promote any unlawful activity or purpose, including without limitation, any activity that could give rise to criminal or civil liability.



- Collect, harvest, mine or engage in any other activity to obtain e-mail addresses, phone numbers, personal information or any other information about Socialmentum employees, contractors, agents or others.
- Use, or attempt to gain access to, another's user name, password, or computer systems, whether through hacking, password mining or any other means.
- Remove, or falsely add to any contribution you make to the Site, any copyright, trademark or other legal or proprietary rights notices, author attributions.
- Contribute anything to the Site in which you do not own or control, or have not received the necessary licenses to, all Intellectual Property Rights and rights of privacy and publicity.
- Use the Site in any manner that infringes any Intellectual Property Rights or other rights of any party.
- Disrupt or interfere with the security of, or otherwise cause harm to, the Site or any Content thereof or systems resources, accounts, user names, passwords, servers or networks connected to or accessible through the Site or any affiliated sites.
- Transmit unsolicited or bulk communications to any Socialmentum affiliated e-mail address.
- Post or otherwise submit any software, programs or files that are harmful or disruptive of another's equipment, software or other property, including any corrupted files, time bombs, Trojan horses, viruses or worms.
- Create a false identity for the purpose of misleading others.
- Download any Content posted by another that you know, or reasonably should know, cannot be legally reproduced, distributed, performed or displayed in such manner.
- Disrupt, interfere with or inhibit any other user from using and enjoying the Site or other affiliated or linked sites.
- Access or use the Site in any manner that could damage, disable, overburden or impair any Socialmentum server or the network(s) connected to any Socialmentum server.
- Violate any applicable laws or regulations related to the access to or use of the Site.
- Contribute any topic, name, material or information to the Site that is child pornography, defamatory, excessively violent, harassing, inappropriate, indecent, lascivious, lewd, obscene, profane, racist, unlawful, or otherwise objectionable.
- Prepare, compile, use, download or otherwise copy any Site user directory or other user or usage information or any portion thereof, or transmit, provide or otherwise distribute (whether or not for a fee) such directory or information to any third party.
- Contribute to the Site any chain letters, contests, junk e-mail, giveaways, sweepstakes, pyramid schemes, spamming, surveys or any other duplicative or unsolicited messages (commercial or otherwise).
- Violate the rights of Socialmentum or any third party (including rights of privacy and publicity) or abuse, defame, harass, stalk or threaten another.
- Use any Socialmentum domain name as a pseudonymous return e-mail address.
- Pretend to be someone you are not, register more than once, contribute to the same topic multiple times without disclosing as such, or contribute in bad faith.
- Market any goods or services for any business purpose on the Site (including advertising and making offers to buy or sell goods or services), unless specifically allowed to do so by Socialmentum.
- Contribute input, feedback or suggestions provided to you by someone else, in consideration for payment of cash or other consideration.

## **REWARDS PROGRAM**

Socialmentum currently offer a rewards program (the "Rewards Program") on the Site through which Socialmentum awards certain prizes to users of the Site based on their contributions to the Site. Please see [www.\(projecturl\)/rewards](http://www.(projecturl)/rewards) for additional information regarding the Rewards Program. Socialmentum, in its sole and absolute discretion, shall determine who shall receive a prize, the criteria for making such determination, and what prize shall be rewarded under any circumstance. Furthermore, Socialmentum retains the right to change, alter, modify, add to or remove any term or condition of the Rewards Program,

including but not limited to, the right to discontinue, at any time for any reason, the Rewards Program. Neither Socialmentum nor the entity sponsoring the Site (the "Sponsor") is under any obligation to award any prize to any user of the Site for any reason. Socialmentum, on behalf of itself and the Sponsor, disclaims any and all liability that may arise from or is related to a user's use, control, ownership or possession of any prize awarded as part of the Rewards Program.

## **USAGE AND MONITORING**

While Socialmentum has no obligation to monitor the Site and is not responsible for the content of any messages, information or files you contribute, Socialmentum reserves the right to monitor or review the Site at any time. Socialmentum may, at any time without notice and in its sole discretion, inactivate, make unavailable and take other appropriate action with respect to messages, information or files which Socialmentum, in its sole discretion, deems objectionable or otherwise in violation of the Terms of Use. Such action may include denying access to the Site at any time. Furthermore, Socialmentum may, with or without notice and in its sole discretion, terminate your access to or use of the Site as Socialmentum deems necessary to comply with applicable law, regulation, legal process or governmental request. All persons are hereby notified that use of the Site constitutes consent to such actions. Socialmentum does not endorse and has no control over user submissions. We cannot guarantee the authenticity of any data which users may provide about themselves or related to their idea or submissions. You acknowledge your use of the Site is at your own discretion and you will be solely liable and responsible for any damage or loss to any party resulting therefrom.

During the registration process, you will be required to provide us with your name, birthdate, zip code and email address. We will follow up by sending you an email to verify that you are the owner of the email address. We will use your email address to identify you in our system. If you do not provide the mandatory data required at registration, you will not be able to use the Site. You can choose to provide us with additional optional personal information in your profile, including your gender and mobile phone number.

All required information that you provide during the registration process must be current, complete and accurate and kept up to date on a prompt, timely basis. You must also choose a user name and password in connection with such registration. We reserve the right to inactivate or reclaim your user name if and when we believe necessary and/or appropriate. It is your sole responsibility to keep your user name, password and other sensitive information confidential. If you become aware of any unauthorized use of your user name or password or any other breach of security, you shall notify Socialmentum immediately. By accessing or using this Site and setting up a password-restricted profile for the same, you consent to Socialmentum's display of such information and accept all risks of unauthorized access to such information. With regard to the registration process, you agree to the following:

- You will not provide any false personal information on the Site, or create an account for anyone other than yourself.
- You will not use your personal profile for your own commercial gain (such as selling your idea submission ability to an advertiser).
- You will keep your contact information accurate and up-to-date. This is the only means by which you can be contacted directly by the Site's administrator.
- You will not share your password, let anyone else access your profile, or do anything else that might jeopardize the security of your profile.
- You will not transfer your profile to anyone.
- You shall not (a) select or use as a user name or any name of another person with the intent of impersonating that person, (b) use as a user name any name subject to any rights of a person other than you without appropriate authorization, or (c) use as a user name any name that is offensive, vulgar or obscene.

## **USE OF SITE BY GOVERNMENTAL ENTITIES**

Socialmentum intends to comply with all local, state and federal laws related to the required disclosure of any information provided on the Site. Under many instances the Sponsor of this Site will be a governmental entity. In such instances, the governmental entity sponsoring the Site may or may not use the information that you provide on the Site for the purposes associated with such Site. It should be noted that such information may or may not be considered public information or public records under applicable state and federal laws. To the extent that anything you contribute to the Site, including your personal information, is considered a public record or as otherwise belonging to a governmental entity and, therefore, subject to certain local, state or federal disclosure laws, such applicable laws will govern the use and required disclosure of such information.

## **SOCIALMENTUM'S RIGHTS TO SUBMITTED MATERIALS**

For all information, data, commentary, documents, communications, downloads, files, text, images, photographs, graphics, videos, webcasts, publications, content, tools, resources, code, programs and products made available or enabled via the Site by Socialmentum (collectively the "Materials") that you post or otherwise submit to the Site, you grant Socialmentum, the Sponsor and the users of this Site an unrestricted, irrevocable, non-exclusive, worldwide, royalty-free and fully paid up license under all Intellectual Property Rights to use, reproduce, publicly display, publicly perform, copy, edit, modify, translate, reformat, transmit and distribute your contribution, including such Materials, with or without having your name attached thereto, in any manner or form and for any lawful purpose, with full rights to sublicense such rights through multiple tiers of distribution. You acknowledge and agree that neither Socialmentum nor the Sponsor shall be liable for any failure to store such Materials on the Site at any time. You represent and warrant that you own all right, title and interest in and to the Materials that you post to the Site, or that you own or control, or have received the necessary licenses or other rights to, contribute such Materials to the Site.

You are solely and entirely responsible for all of your contributions to the Site. You shall assume all risks associated with any reliance on the accuracy, completeness or usefulness of contributions from others. Socialmentum does not guarantee the accuracy, integrity or quality of the Materials you contribute or the Materials anyone else contributes. You acknowledge and agree that by accessing or using the Site, you may be exposed to Materials from others that you find objectionable. You acknowledge and agree that neither Socialmentum nor the Sponsor shall be liable for any actions or inactions resulting from or related to any contribution made on the Site.

## **RESTRICTION AND TERMINATION OF USE**

Socialmentum may block, restrict, disable, suspend or terminate your access to all or part of the Site at any time in Socialmentum's sole discretion, without prior notice or liability to you.

Except as indicated to the contrary elsewhere on this Site, you may view, download and print the Materials available on this Site subject to the following conditions:

- You will not quote or display the Materials, or any portions thereof, out of context or misrepresent the Materials.
- Socialmentum reserves the right to revoke the authorization to view, download and print any or all of the Materials available via this Site at any time, and any such use shall be discontinued immediately upon notice from Socialmentum.

## **LINKS TO THIRD PARTY SITES**

The Site may include links that will take you to other sites outside of the Site ("Linked Sites"). The Linked Sites are provided by Socialmentum to you as a convenience and the inclusion of the links does not imply any endorsement by Socialmentum of any Linked Site. Unless otherwise provided, Socialmentum has no control of the Linked Sites and you therefore acknowledge and agree that neither Socialmentum nor the Sponsor is responsible for the contents of any Linked Site, any link contained in a Linked Site or any

changes or updates to a Linked Site. You further acknowledge and agree that neither Socialmentum nor the Sponsor is responsible for any form of transmission (e.g. webcasting) received from any Linked Site.

Furthermore, you may be able to access the Site from certain third party websites that are not affiliated with or related to this Site (i.e., Facebook, LinkedIn, etc.). Neither Socialmentum nor the Sponsor is responsible for any information that you submit or actions that you take on these third party sites, and each disclaims and all liability from any claims, damages or causes of action that may arise out of or relate to your use of such sites.

## **WARRANTIES AND DISCLAIMERS**

THE SITE IS PROVIDED BY SOCIALMENTUM "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, SOCIALMENTUM, ON BEHALF OF ITSELF AND THE SPONSOR, MAKES NO WARRANTY THAT (i) THE USE OF THE SITE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; (ii) THE SITE CONTENT WILL BE ACCURATE OR RELIABLE; (iii) THE SITE WILL MEET YOUR EXPECTATIONS; OR (iv) ANY ERRORS OR DEFECTS IN THE SITE WILL BE CORRECTED.

THIS SITE MAY INCLUDE TECHNICAL OR OTHER MISTAKES, INACCURACIES, OR TYPOGRAPHICAL ERRORS. SOCIALMENTUM MAY MAKE CHANGES TO THE SITE, MATERIALS AND SERVICES AT ANY TIME IN ITS SOLE DISCRETION AND WITHOUT NOTICE. THE SITE, MATERIALS AND SERVICES MAY BE OUT OF DATE, AND SOCIALMENTUM MAKES NO COMMITMENT TO UPDATE THE SITE.

YOU ACKNOWLEDGE AND AGREE THAT: (i) NEITHER SOCIALMENTUM NOR THE SPONSOR CONTROLS, ENDORSES, OR ACCEPTS RESPONSIBILITY FOR ANY MATERIALS OR SERVICES PROVIDED OR OFFERED BY THIRD PARTIES OR THIRD PARTIES ACCESSIBLE THROUGH LINKED SITES; (ii) SOCIALMENTUM AND THE SPONSOR MAKE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER ABOUT ANY SUCH THIRD PARTIES, THEIR MATERIALS OR SERVICES; (iii) ANY DEALINGS YOU MAY HAVE WITH SUCH THIRD PARTIES ARE AT YOUR OWN RISK; AND (iv) NEITHER SOCIALMENTUM NOR THE SPONSOR SHALL BE LIABLE OR RESPONSIBLE FOR ANY MATERIALS OR SERVICES OFFERED BY THIRD PARTIES.

SOCIALMENTUM, ON BEHALF OF ITSELF AND THE SPONSOR, SPECIFICALLY DISCLAIMS ANY LIABILITY WITH REGARD TO THE SITE AND ANY ACTIONS RESULTING FROM YOUR USE OF THE SITE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER SOCIALMENTUM NOR THE SPONSOR WILL HAVE ANY LIABILITY RELATED TO SUBMITTED MATERIALS ARISING UNDER INTELLECTUAL PROPERTY RIGHTS, LIBEL, PRIVACY, PUBLICITY, OBSCENITY OR OTHER LAWS. SOCIALMENTUM, ON BEHALF OF ITSELF AND THE SPONSOR, ALSO DISCLAIMS ALL LIABILITY WITH RESPECT TO THE MISUSE, LOSS, MODIFICATION OR UNAVAILABILITY OF ANY SUBMITTED MATERIALS.

THE USE OF THE SITE IS AT YOUR OWN DISCRETION AND RISK AND WITH YOUR AGREEMENT THAT YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE OR HARM THAT RESULTS FROM SUCH ACTIVITIES.

SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY MAY LAST, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. TO THE EXTENT PERMISSIBLE, ANY IMPLIED WARRANTIES ARE LIMITED TO NINETY (90) DAYS.

## **PERSONAL INFORMATION AND PRIVACY**



Socialmentum will use and protect your Personal Information in accordance with the Socialmentum Website Privacy Policy available on the Site, the contents of which are incorporated by reference into the Terms of Use.

### **LIMITATION OF LIABILITY**

IN NO EVENT SHALL SOCIALMENTUM ITS AFFILIATES OR THEIR RESPECTIVE OFFICERS, DIRECTORS, MEMBERS, MANAGERS, PARTNERS, EMPLOYEES, OR AGENTS OR THE SPONSOR BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY SPECIAL, PUNITIVE, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR LOSSES OF ANY KIND, OR ANY DAMAGES OR LOSSES WHATSOEVER, INCLUDING THOSE RESULTING FROM LOSS OF USE, DATA OR PROFITS, WHETHER OR NOT FORESEEABLE OR IF SOCIALMENTUM OR THE SPONSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES, AND ON ANY THEORY OF LIABILITY, INCLUDING BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR OTHER TORTIOUS ACTION, OR ANY OTHER CLAIM ARISING OUT OF OR IN CONNECTION WITH: (i) THE ACCESS OR USE OF OR THE INABILITY TO ACCESS OR USE THE SITE; (ii) THE STATEMENTS OR ACTIONS OF ANY THIRD PARTY ON OR VIA THE SITE; (iii) ANY DEALINGS WITH VENDORS OR OTHER THIRD PARTIES; (iv) ANY UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS, SUBMITTED MATERIALS OR OTHER DATA; (v) ANY INFORMATION THAT IS SENT OR RECEIVED OR NOT SENT OR RECEIVED; (vi) ANY FAILURE TO STORE OR LOSS OF DATA, FILES, MATERIALS OR OTHER CONTENT; (vii) ANY SERVICES AVAILABLE THAT ARE DELAYED OR INTERRUPTED; (viii) ANY WEB SITE REFERENCED OR LINKED TO FROM THIS SITE; OR (ix) YOUR ACCESS TO OR USE OF OR INABILITY TO ACCESS OR USE ANY LINKED SITE. SOME JURISDICTIONS PROHIBIT THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES. ACCORDINGLY, THE LIMITATIONS AND EXCLUSIONS SET FORTH ABOVE MAY NOT APPLY TO YOU.

### **INDEMNITY AND LIABILITY**

You agree to indemnify and hold the Sponsor, Socialmentum and its affiliates and their respective officers, directors, partners, employees, or agents harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of: (i) Materials and any other content (e.g. computer viruses) that you may submit, post to or transmit through the Site (including a third party's use of such Materials or Content (e.g. reliance on the accuracy, completeness or usefulness of such Materials)); (ii) your access to or use of the Site; (iii) your connection to the Site; (iv) your violation of the Terms of Use; (v) your infringement of any third party's Intellectual Property Rights when using or accessing the Site; (vi) your violation of any rights of any third party; or (vii) your access to or use of Linked Sites and your connections thereto.

### **GOVERNING LAW AND JURISDICTION**

This Site (excluding Linked Sites) is controlled by Socialmentum from the State of Nebraska. By accessing this Site, you agree that all matters relating to your access to, or use of, this Site shall be governed by the statutes and laws of the State of Nebraska, without regard to the conflicts of laws principles thereof. You also agree and hereby submit to the exclusive personal jurisdiction and venue of an appropriate state or federal court in Nebraska with respect to such matters.

### **GENERAL**

The Terms of Use and other rules, guidelines, licenses and disclaimers posted via the Site constitute the entire agreement between Socialmentum and you with respect to your access to or use of the Site, superseding any prior agreements between you and Socialmentum on such subject matter (including any prior versions of the Terms of Use). Notwithstanding the foregoing, to the extent that any terms set forth in the Terms of Use expressly contradict any terms of a written agreement between you and Socialmentum regarding the use of specific Services or Materials ("Executed Agreement"), such contradictory terms set forth in the Executed Agreement shall govern. You may not assign or otherwise

transfer the Terms of Use nor any right granted hereunder without Socialmentum's prior written consent. If for any reason a court of competent jurisdiction finds any provision of the Terms of Use, or portion thereof, to be unenforceable, that provision shall be enforced to the maximum extent permissible so as to effectuate the intent of the parties as reflected by that provision, and the remainder of the Terms of Use shall continue in full force and effect. Any failure by Socialmentum to enforce or exercise any provision of the Terms of Use or related right shall not constitute a waiver of that right or provision. The section titles used in the Terms of Use are purely for convenience and carry with them no legal or contractual effect

**EXHIBIT B  
SCHEDULE OF BILLING RATES**

**1. General**

City shall be responsible for paying and/or reimbursing all of the costs and expenses listed below

**2. Site Development Services and Monthly Site Maintenance**

\$2,500 for Site Construction, including three (3) training sessions

\$250 per month for Site Maintenance

**3. Additional Support Services**

City shall pay all fees and costs associated with any Additional Support Services provided by Consultant to City in accordance with Section 4 and 5, below.

**4. Hourly Rate Schedule for Additional Support Services**

| <u>Description</u>         | <u>Rate</u>  |
|----------------------------|--------------|
| Principal Staff            | \$150 / hour |
| Design & Development Staff | \$100 / hour |
| Support Staff              | \$50 / hour  |

**5. Reimbursables for Additional Support Services**

**SUBCONSULTANTS:** Services provided by other consultants that are invoiced to and paid by the Consultant, will be charged and reimbursed at actual cost.

**AUTOMOBILE TRANSPORTATION:** Automobile transportation in connection with the Services will be charged and reimbursed at a rate of \$0.55 per mile.

**COMMERCIAL TRAVEL AND SUBSISTENCE:** Airline travel, auto rentals, living expenses, and other similar direct expenses in connection with out of town travel will be charged and reimbursed at actual cost, with prior authorization of City.

**FILING FEES AND OTHER COSTS ADVANCED:** All filing or permit fees and other similar costs that are paid by Consultant will be charged and reimbursed at actual cost.

**REPRODUCTION OF BID DOCUMENTS:** Reproduction of bid documents (plans and specifications) will be charged and reimbursed at actual cost.

**F. MISCELLANEOUS EXPENSES:** All miscellaneous expenses in connection with Additional Support Services, including but not limited to reproductions (e.g., plotting, photocopies, photographic reproductions, and all minor printing and

materials); support materials (e.g., photographs, graphic supplies, office supplies, etc.) postage charges and phone .

**6. Non-Reimbursables**

All Miscellaneous Expenses as set forth in Section 5.F, above, incurred by Consultant in connection with the Site Development Services and Monthly Site Maintenance, are not reimbursable by City.



## EXHIBIT C

### 1. INSURANCE REQUIREMENTS – PROFESSIONAL SERVICES

1.1 Provision of Insurance. Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City. Consultant agrees to provide insurance in accordance with requirements set forth here. If Consultant uses existing coverage to comply and that coverage does not meet these requirements, Consultant agrees to amend, supplement or endorse the existing coverage.

1.2 Acceptable Insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

#### 1.3 Coverage Requirements.

1.3.1 Workers' Compensation Insurance. Consultant shall maintain Workers' Compensation Insurance, statutory limits, and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000) each accident for bodily injury by accident and each employee for bodily injury by disease in accordance with the laws of the State of California, Section 3700 of the Labor Code.

1.3.1.1 Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees and volunteers.

1.3.2 General Liability Insurance. Consultant shall maintain commercial general liability insurance, and if necessary umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) general aggregate. The policy shall cover liability arising from premises, operations, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) with no endorsement or modification limiting the scope of coverage for liability assumed under a contract.

1.3.3 Automobile Liability Insurance. Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit each accident.

1.3.4 Professional Liability (Errors & Omissions) Insurance. Consultant shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of one million dollars (\$1,000,000) per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

1.4 Other Insurance Requirements. The policies are to contain, or be endorsed to contain, the following provisions:

1.4.1 Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these requirements to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subconsultants.

1.4.2 Additional Insured Status. All liability policies including general liability, excess liability, pollution liability, and automobile liability, but not including professional liability, shall provide or be endorsed to provide that City and its officers, officials, employees, and agents shall be included as insureds under such policies.

1.4.3 Primary and Non Contributory. All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-insurance maintained by City.

1.4.4 Notice of Cancellation. All policies shall provide City with thirty (30) days notice of cancellation (except for nonpayment for which ten (10) days notice is required) or nonrenewal of coverage for each required coverage.

1.5 Additional Agreements Between the Parties. The parties hereby agree to the following:

1.5.1 Evidence of Insurance. Consultant shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation and other endorsements as specified herein for each coverage. Insurance certificates and endorsement must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

1.5.2 City's Right to Revise Requirements. The City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving the Consultant sixty (60) days advance written notice of

such change. If such change results in substantial additional cost to the Consultant, the City and Consultant may renegotiate Consultant's compensation.

1.5.3 Enforcement of Agreement Provisions. Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

1.5.4 Requirements not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

1.5.5 Self-insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these requirements unless approved by City.

1.5.6 City Remedies for Non Compliance. If Consultant or any subconsultant fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance, to terminate this agreement, or to suspend Consultant's right to proceed until proper evidence of insurance is provided. Any amounts paid by City shall, at City's sole option, be deducted from amounts payable to Consultant or reimbursed by Consultant upon demand.

1.5.7 Timely Notice of Claims. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

1.5.8 Consultant's Insurance. Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.